IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 16621 of 2005(R)

PETITIONER:

P.S.GOPINATHAN, DISTRICT JUDGE,
THODUPUZHA.

BY ADV. SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.T.NAVEEN
SRI.T.G.SUNIL

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE HIGH COURT OF KERALA, ERNAKULAM, REPRESENTED BY ITS REGISTRAR.**

3. **THOMAS.P.JOSEPH, DISTRICT JUDGE, KOZHIKODE.**

4. **P.BHAVADASAN, REGISTRAR, HIGH COURT OF KERALA, ERNAKULAM.**

5. **S.S.SATHEESA CHANDRAN, DISTRICT JUDGE, KOLLAM.**

6. **K.N.BALAKRISHNA PANICKER, RAILWAY CLAIMS TRIBUNAL, ERNAKULAM.**

BY ADV. SRI.V.GIRI for R3 & R5
SRI.S.RAMESH BABU for R4
SRI.K.R.B.KAIMAL for R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON 31/07/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER G.O.MS.NO.159/91/HOME DTD. 19/11/1991 ISSUED BY THE GOVERNMENT.

EXT.P2: COPY OF ORDER G.O.MS.NO.22/92/HOME DTD. 14/01/992 ISSUED BY THE GOVERNMENT.

EXT.P3: COPY OF NOTIFICATION G.O.MS.NO.12/92/HOME DTD. 14TH JANUARY, 1992 ISSUED BY THE GOVERNMENT.

EXT.P4: COPY OF ORDER NO.B1-58909/91 DTD. 29/02/1992 ISSUED BY THE 2ND RESPONDENT.

EXT.P5: COPY OF ORDER, G.O.(,MS) NO.133/92/HOME DTD. 15/07/1992 ISSUED BY THE GOVERNMENT.

EXT.P6: COPY OF ORDER G.O.(MS) NO.134/92/HOME DTD. 15/07/1992 ISSUED BY THE GOVERNMENT.

EXT.P7: COPY OF ORDER NO.B1-4507/92 DTD. 31/07/1992 ISSUED BY THE 2ND RESPONDENT.

EXT.P8: COPY OF THE REPRESENTATION DTD. 28/10/1992 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P9: COPY OF DRAFT SENIORITY LSIT OF DISTRICT AND SESSIONS JUGES AS ON 16/08/1994.

EXT.P10: COPY OF REPRESENTATION DTD. 25/10/1994 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P11: COPY OF ORDER NO.B4-50212/92 DTD. 18/01/1995 ISSUED BY THE 2ND RESPONDENT.

EXT.P12: COPY OF REPRESENTATION DTD. 17/04/1995 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P13: COPY OF REMINDER DTD. 7/02/1998 SENT BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P14: COPY OF REPRESENTATION DTD. 20/05/2000 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

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EXT.P15: COPY OF ORDER NO.B1-41625/2002 DTD. 18/12/2003 ISSUED BY THE 2ND RESPONDENT.

EXT.P16: COPY OF REPRESENTATION DTD. 8/03/2004 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P17: COPY OF COMMUNICATION NO.B1-17450/2004 DTD. 12/03/2004 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P18: COPY OF ORDER NO.B1-41625/2002 DTD. 1/09/2004 ISSUED BY THE 2ND RESPONDENT.

EXT.P19: COPY OF REPRESENTATION DTD. 15/09/2004 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P20: COPY OF ORDER NO.B1-41625/2002 DTD. 2/11/2004 ISSUED BY THE 2ND RESPONDENT.

EXT.P21: COPY OF OFFICIAL MEMORANDUM NO.B1-31113/2001 DTD. 09/09/2005 ISSUED BY THE HON'BLE HIGH COURT OF KERALA.

EXT.P22: COPY OF OFFICIAL MEMORANDUM NO.B1-31113/1991 (2) DTD. 13/10/2005 ISSUED BY THE 2ND RESPONDENT.

EXT.P23: COPY OF COMMUNICATION NO.B1-58909/91 SDTD. 10/12/1991 SENT BY THE HIGH COURT OF KERALA TO THE GOVERNMENT.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE OFFICIAL MEMORANDUM NO.B1-50182/90 DTD. 27/10/1990 ISSUED BY THE 2ND RESPONDENT.

EXT.R2(B); COPY OF THE D.O.LETTER NO.B1-50182/90 (ii) DTD. 19/01/1991 FROM THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.R2(C): COPY OF THE GOVT.ORDER G.O.MS.NO.160/91/HOME DTD. 19/11/1991.

EXT.R2(D): COPY OF THE G.O.P.NO.47/92/HOME DTD. 29/02/1992.

WPC.NO.16621/2005 R

4TH RESPONDENT'S EXHIBIT:

EXT.R4(A): COPY OF THE NOTIFICATION NO.R18/91 (SS) DTD. 20/03/1991.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): COPY OF THE ORDER NO.B1/37/92 DTD. 31/03/1992 ISSUED BY THE SECOND RESPONDENT.

EXT.R5(B): COPY OF THE ORDER OF THE HIGH COURT NO.B1-14234/92 DTD. 20/05/1992 APPOINTING 5TH RESPONDENT.

/TRUE COPY/

P.S.TO JUDGE

KSS

K. PADMANABHAN NAIR, J.

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W.P(C). NO. 16621 OF 2005

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Dated this the 19th day of February, 2007

J U D G M E N T

Petitioner, who is working as a District Judge, has filed this Writ Petition for quashing Exhibits P9, P21 and P22 orders.

2. Brief facts necessary for the disposal of this Writ Petition are as follows: Petitioner was directly recruited as a Munsiff on 1.1.1982 and took charge on 26.4.1982. He was promoted as Subordinate Judge on 28.8.1986. He was appointed as District & Sessions Judge as per Exhibit P2 on 14.1.1992. Exhibit P3 is a Notification issued by the Governor on the same day. He was appointed as the District Judge in the Kerala State Higher Judicial Service and posted as Additional District Judge in Kozhikode. In Exhibit P7 it was stated that his posting will be temporary without probationary right and seniority will be determined later. Subsequently Exhibit P6 appointment order was issued by the Government on 15.7.1992. Before that respondents 3 to 5 were appointed. Respondents 3 and 4 were appointed by direct recruitment on 31.3.1992 and took charge on

2.4.1992. Fifth respondent was appointed as per order dated 30.5.1992 and he took charge on 1.6.2992. This Court took the date of appointment of the petitioner as 31.7.1992 and declared his date of commencement of probation as 31.7.1992. Exhibit P9 is the draft seniority list as on 16.8.1994. Petitioner filed objections claiming seniority over respondents 3 to 6. In the meanwhile, respondents 3 to 5 were promoted as Selection Grade District Judges and also subsequently as Super Time Scale District Judges. Petitioner's request was turned down as per Exhibits P21 and P22. So this Petition is filed to quash Exhibits P9, P21 and P22.

in the Writ Petition it is averred that under the Special Rules for the Kerala State Higher Judicial Service issued by G.O(P) No.373/61/Home dated 11.7.1961 published in the Kerala Gazette dated 18.7.1961 Subordinate Judge was the feeder category for promotion to the category of District and Sessions Judge included as category No.2 in the Special Rules. It is averred that the appointment under the said Special Rules to the category of District and Sessions Judge had to be made by promotion from the category of Subordinate Judges and by direct recruitment. It is averred that while Kerala State Higher Judicial Service Special Rules 1961 was in force, High Court prepared a select list of 11

Subordinate Judges for promotion to the category of District and Sessions Judge. That list was approved by the Government as per Exhibit P1 dated 19.11.1991. Petitioner was placed at Sl.No.2. It is averred that though sixth respondent was senior in the category of Subordinate Judge to the petitioner, his name was not included in the select list as he was unsuitable for selection to the category of District and Sessions Judge in the year 1991. It is also averred that from Exhibit P1 select list Shri James J.Murickan was given appointment as District and Sessions Judge in 1991 itself. It is further averred that by Government Order dated 14.1.1992 which is marked as Exhibit P2, petitioner and two others were given promotion as District and Sessions Judges. It is also averred that on the basis of Exhibit P2, Exhibit P3 Notification was issued under Article 233(1) of the Constitution of India. It is further averred that thereafter petitioner was posted by the High Court as Additional District Judge, Kozhikode, as per Exhibit P4 posting order. It is averred that by Notification dated 31.12.1991 Government issued Kerala Judicial Service Rules 1991 which came into force from 1.1.1992. It is averred that by that Rule Subordinate Judges and Chief Judicial Magistrates are integrated as category No.1 and Munsiffs and Magistrates are integrated as Category No.2. It is averred that thereafter the method of

appointment prescribed in Rules of the Kerala State Higher Judicial Service Special Rules issued in 1961 was amended by G.O.(P) No.47/92/Home dated 29.2.1992 published in the Kerala Gazette dated 29.2.1992 with effect from 1.1.1992. It is averred that when the petitioner was selected for appointment was District and Sessions Judge and included in Exhibit P1 select list approved by the Government, Subordinate Judge alone was the feeder category for promotion to the category of District and Sessions Judge. That was the reason why petitioners and two others promoted as per Exhibit P2 and consequential Notification under Article 233(1) of the Constitution of India was issued by Exhibit P3. It is contended that by retrospective amendment introduced as per the Government Order dated 29.2.1992 the vested right accrued to the petitioner cannot be taken away and hence his promotion as District and Sessions Judge as per Exhibit P2 cannot be affected by the amendment introduced. It is averred that Hight Court issued posting orders in which it was stated that appointment was temporary without probationary right and seniority will be determined later. It is contended that such a statement was made without any authority of law since by the order of appointment, petitoiner obtained a vested right to count his seniority with effect from the date of his appointment

and that statutory right cannot be in any way be affected by the amendment introduced to the 1961 Rules. It is further averred that petitioner was holding a regular appointment as District and Sessions Judge based on Exhibits P2 and P3 based on Exhibit P1 select list prepared by the High Court and approved by the Government by order dated 15.7.1992 in which the 6th respondent was given seniority above the petitioner. Copy of that select list approved by the Government is produced as Exhibit P5. It is averred that based on Exhibit P5 order Government issued another appointment order to the petitioner as District and Sessions Judge in which the sixth respondent was placed above the petitioner. The said order is produced as Exhibit P6. It was contended that a reading of Exhibit P6 would show that earlier appointment given to the petitioner as per Exhibits P2 and p3 were not cancelled and those were kept in tact. It is further averred that after the issuance of Exhibit P6 no Notification under Article 233(1) of the Constitution of India was issued as in the case of Exhibit P3 appointing the petitioner as District and Sessions Judge. Obviously that notification is not necessary due to the fact that Exhibit P3 Notification under Article 233(1) of the Constitution of India was already issued by the Governor of Kerala. According to the petitioner

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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. R.P. NO.

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O R D E R

4TH JANUARY, 2007